

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BRENDA TOLBERT,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 4:11-CV-00107
	§	
RBC CAPITAL MARKETS	§	
CORPORATION N/K/A RBC CAPITAL	§	
MARKETS, LLC, RBC CENTURA	§	
BANK N/K/A RBC BANK (USA),	§	
RBC U. S. INSURANCE SERVICES, INC.,	§	
Defendants.	§	

MOTION TO JOIN PARTY DEFENDANT

Pursuant to Fed. R. Civ. P. 20(a)(2) and 21, Plaintiffs, Brenda Tolbert, Chip Gift, and Joseph Neuhaus, ask this Court to join Royal Bank of Canada US Wealth Accumulation Plan f/k/a Dain Rauscher Wealth Accumulation Plan (the “WAP”), as a defendant in this case.

I.

Although Plaintiffs sued the WAP *sponsors*:

- (a) for a judgment declaring that *their* WAP is not a valid top hat plan;
- (b) for appropriate equitable relief against the sponsors under 28 U.S.C. § 1132(a)(2) and (3);
- (c) to remedy the *sponsors*’ fiduciary breaches; and
- (d) for attorneys’ fees,

the Defendants have stated that the WAP should be a party to the case. Plaintiffs disagree, since they are not seeking to recover benefits due under the plan under § 1132(a)(1)(B) and because the plan document states that the current Defendants are the parties financially responsible for the WAP. *See, e.g.,* Plaintiff’s Response to Defendants’ Motion for Summary Judgment and Reply in Support of its Motion for Partial Summary Judgment [Dkt. #93] at pp. 59-63;

Defendants' Answer [Dkt. #99] at §§ 5, 19, and 20. Nonetheless and out of an abundance of caution, Plaintiffs ask the Court to add the WAP as a Defendant in this case.

II.

Joinder will not delay the case, nor prejudice the Defendants. As stated above, the Defendants are the financially responsible parties in this case, and they have vigorously defended themselves from the outset of this suit. Their interests are identical to the new defendant's interests. Plaintiffs do not need any additional or independent discovery from the new defendant in this suit, and since its interests are obviously aligned with the current Defendants, the WAP may avail itself of any discovery conducted by the parties to date.

III.

The WAP was a named defendant in Plaintiff's Original Complaint and previously appeared in this case as a party to Defendants' Motion To Dismiss [Dkt. #22].

IV.

Pursuant to Fed. R. Civ. P. 10(c), Plaintiffs adopt and incorporate by reference all previously filed motions and pleadings (including, but not limited to, Plaintiff's First Amended Class Action Complaint [filed April 7, 2011]) [Dkt. #24], and assert the same against the WAP.

WHEREFORE, Plaintiffs ask this Court to grant this Motion to Join Party Defendant and for such other and further relief, both at law and in equity, general or special, to which they may show themselves to be entitled.

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

By: /s/ Geoffrey H. Bracken

Geoffrey H. Bracken
State Bar No. 02809750
J. Palmer Hutcheson
State Bar No. 10335500

1000 Louisiana, Suite 3400
Houston, Texas 77002-5007
Telephone: 713.276.5739
Facsimile: 713.276.6739

By: /s/ William G. Whitehill

William G. Whitehill
State Bar No. 21356550
Joe B. Harrison
State Bar No. 09115500

1601 Elm Street, Suite 3000
Dallas, Texas 75201
Telephone: 214.999.4633
Facsimile: 214.999.3633

**ATTORNEYS FOR PLAINTIFFS,
BRENDA TOLBERT, CHIP GIFT, AND
JOSEPH NEUHAUS**

CERTIFICATE OF CONFERENCE

The undersigned counsel has previously conferred with opposing counsel, Sari M. Alamuddin, concerning the relief sought in this Motion, and was advised that Defendants opposed the same.

/s/ Geoffrey H. Bracken

Geoffrey H. Bracken

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on Defendants' counsel *via* the Court's electronic filing system this 11th day of October, 2012.

Alison J. Gates
Morgan, Lewis & Bockius LLP
1000 Louisiana, Suite 4200
Houston, Texas 77002
713-890-5157 (telephone)
713-890-5001 (facsimile)

Sari M. Alamuddin
Christopher J. Boran
Morgan, Lewis & Bockius LLP
77 West Wacker Drive, Fifth Floor
Chicago, Illinois 60601
312-324-1000 (telephone)
312-324-1001 (facsimile)

/s/ Geoffrey H. Bracken
Geoffrey H. Bracken